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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/536,533

11/29/2005

Ganga Prasad Rai

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EXAMINER

HINES, JANA A

ART UNIT

PAPER NUMBER

1645

MAIL DATE

DELIVERY MODE

10/01/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 10/536,533</p>	<p><b>Applicant(s)</b> RAI ET AL.</p>	
	<p><b>Examiner</b> JaNa Hines</p>	<p><b>Art Unit</b> 1645</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 24 August 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: None.  
Claim(s) objected to: None.  
Claim(s) rejected: 23-27.  
Claim(s) withdrawn from consideration: 28.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Mark Navarro/  
Primary Examiner, Art Unit 1645

The rejection of claims 24-26 under 35 U.S.C. 102(b) as being anticipated by Lim et al., (J. Clinical Microbio. 1987. Vol. 25(7): 1165-1168) is maintained for reasons already of record.

It is noted, that applicants amendments do not change the substance of the rejections already made of record. Applicants argue that antibody of Lim is antibodies specific to Salmonella typhi and Salmonella panama, whereas the instantly claimed reagent has an antibody specific to Salmonella typhi. Therefore Lim et al., do not anticipate the claims. However it is the position of the Office that the antibody of Lim et al., meet the instantly recited limitations because, as Applicants agree, the antibody is specific to Salmonella typhi. The fact that the antibody of Lim et al., is specific to an additional Salmonella species, do not teach away of prevent the antibody from being specific to Salmonella typhi. Furthermore, the additional binding abilities do not prevent the 0-9 antibody from meeting the instantly claimed limitations. Therefore Applicants arguments are not persuasive and the rejection is maintained.

The rejection of claims 23-27 under 35 U.S.C. 103(a) as being unpatentable over Nilsson et al., (Electrophoresis. 2001. Vol. 22:2384-2390) and Salzman et al (WO 01/40280 published June 1, 2001) in view of Sukosol et al., (Asian Pacific J. of Allergy and Immuno. 1994. Vol. 12. pages 21-25) is maintained for reasons already of record.

Applicants urge that claim 23 recites that recited invention teaches that the washing step is performed. It would have been prima facie obvious at the time of applicants' invention to apply an antibody specific to Salmonella typhi as taught by Sukosol et al., and the preparation of the antibody as taught by Salzman et al., to the method for the preparation of latex particles as taught by Nilsson et al., in order to provide improve the detectability. Also, it would have been prima facie obvious to combine the invention of Salzman, Sukosol and Nilsson et al., to advantageously achieve a general method applicable to most proteins that creates a system for highly selective and sensitive protein detection. Thus, contrary to Applicants assertion, a prima facie case of obviousness has been established. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Therefore the fact that they are differences whose limitations are not claimed is not found persuasive and the rejection is maintained.

The new matter rejection of claims 23-27 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Neither the specification nor originally presented claims provides support for an a process for preparing an agglutination reagent for detecting typhoid comprising preparing a polyclonal-monospecific antibody specific to Salmonella typhi and coating a latex particle with the polyclonal-monospecific antibody. Applicant did not point to support in the specification for preparing the polyclonal-monospecific antibody specific to Salmonella typhi as recited by the amended claims. Therefore the rejection is maintained.